

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

WILLIAM T. MASON,)	
Plaintiff,)	
vs.)	No. 3:08-CV-0677-B (BH)
)	ECF
CITY OF DALLAS, TEXAS,)	Referred to U.S. Magistrate Judge
Defendant.)	

**FINDINGS, CONCLUSIONS, AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to Special Order No. 3-251, the District Court referred this case for judicial screening. The findings, conclusions, and recommendation of the Magistrate Judge are as follows:

I. BACKGROUND

In August 2007, Plaintiff filed an action in the Eastern District of Texas against the City of Dallas for wrongfully removing him from the Central Dallas Public Library. On August 30, 2007, the United States District Court for the Eastern District of Texas granted Plaintiff permission to proceed *in forma pauperis* and ordered defendant to be served by the United States Marshal. After Defendant moved to transfer the action to this Court, the Eastern District noted that Plaintiff was pursuing a civil action in this Court regarding the same incident (Cause No. 3:06-CV-0047-K), weighed various factors regarding the propriety of transferring the action to this Court, and transferred the action here on April 15, 2008.

As noted by the Eastern District, Plaintiff has filed a previous federal complaint against the City of Dallas and others regarding the same facts. See *Mason v. Ruiz Protective Servs.*, No. 3:04-CV-0047-K (N.D. Tex. filed Jan. 9, 2006). That case proceeded to a bench trial in January 2008, and remains pending under advisement.

II. PRELIMINARY SCREENING

Plaintiff has been granted permission to proceed *in forma pauperis*. His complaint is thus subject to *sua sponte* dismissal under 28 U.S.C. § 1915(e)(2). That section provides for *sua sponte* dismissal, if the Court finds the complaint malicious. A complaint is malicious when it “duplicates allegations of another pending federal lawsuit by the same plaintiff.” See *Pittman v. Moore*, 980 F.2d 994, 995 (5th Cir. 1993).

This Court has conducted a trial on the previous action filed by Plaintiff against the City of Dallas and others. That action stemmed from the same set of facts and occurrences that form the basis for the instant action. Because the prior action remains pending, the Court should dismiss the instant action as malicious pursuant to 28 U.S.C. § 1915(e)(2)(B).

III. RECOMMENDATION

For the foregoing reasons, it is recommended that the District Court summarily **DISMISS** this action with prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B). It is further recommended that the District Court **DENY** all pending motions in this case.

SIGNED this 25th day of April, 2008.


IRMA CARRILLO RAMIREZ
UNITED STATES MAGISTRATE JUDGE

INSTRUCTIONS FOR SERVICE AND NOTICE OF RIGHT TO APPEAL/OBJECT

The United States District Clerk shall serve a copy of these findings, conclusions, and recommendation on plaintiff by mailing a copy to him. Pursuant to 28 U.S.C. § 636(b)(1), any party who desires to object to these findings, conclusions and recommendation must file and serve written objections within ten days after being served with a copy. A party filing objections must specifically identify those findings, conclusions, or recommendation to which objections are being made. The District Court need not consider frivolous, conclusory, or general objections. Failure to file written objections to the proposed findings, conclusions, and recommendation within ten days after being served with a copy shall bar the aggrieved party from appealing the factual findings and legal conclusions of the Magistrate Judge that are accepted by the District Court, except upon grounds of plain error. *Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (*en banc*).


IRMA CARRILLO RAMIREZ
UNITED STATES MAGISTRATE JUDGE